

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

BUREAU OF HEALTH SERVICES and  
DEPARTMENT OF CONSUMER & INDUSTRY  
SERVICES,

Petitioners-Appellees,

v

WILLIAM THOMAS MAINE,

Respondent-Appellant.

---

UNPUBLISHED  
September 14, 2004

No. 247991  
Board of Psychology  
Disciplinary Subcommittee  
LC No. 2001-000271

Before: Whitbeck, C.J., and Sawyer and Saad, JJ.

PER CURIAM.

I. Overview

Respondent William Maine appeals as of right the Department of Consumer & Industry Services, Bureau of Health Services, Board of Psychology Disciplinary Subcommittee's (DSC) order determining that he engaged in the practice of psychology and violated a general duty consisting of either negligence or failure to exercise due care under § 16221(a) of the Public Health Code, MCL 333.1101 *et seq.* We affirm.

II. Basic Facts And Procedural History

This case arose when, in response to a request by a client, Maine wrote a letter to a circuit court judge in which he characterized the actions of the client's wife as "appear[ing] to be of a person who was experiencing symptoms of schizoid, depressive or bipolar disorder." At the time Maine wrote this letter, he had not met his client's wife. Rather, as the letter states, Maine's characterization was based on his client's representations of the wife's behavior. Maine signed the letter with the designation L.L.P., the acronym for "limited license psychologist."

The letter was submitted as evidence against the wife in divorce and child custody proceedings between the couple. Maine claimed that at the time his client requested the letter, he was unaware of any divorce or child custody proceedings between the couple. Maine testified that his sole purpose for writing the letter was to encourage the judge to order an independent evaluation of the family situation.

Although it is not clear from the record how the letter came to its knowledge, the Department of Consumer & Industry Services, Bureau of Health Services filed a complaint,

claiming that when Maine wrote the letter he was engaged in the practice of psychology, and in doing so, he violated § 16221(a) of the Public Health Code. Maine, however, asserted that there was no authority to investigate his activities because those activities were not “related to the practice of” psychology.

An administrative hearing was held to address whether Maine violated the Public Health Code as alleged in the complaint. At the conclusion of the administrative hearing, the hearing referee issued a proposed decision and determined that Maine was not practicing psychology and did not violate any ethical duties. Specifically, the referee found that Maine did not intend the letter to persuade the judge to rule in favor of Maine’s client in any pending litigation, and he did not intend the letter to be a forensic report. According to the referee, the language used in the letter did not suggest that Maine was providing any professional assessment or diagnosis of his client’s wife. The referee also concluded that using the “L.L.P.” designation did not, in and of itself, indicate that Maine was engaging in the practice of psychology.

Subsequently, the DSC found that Maine was engaged in the practice of psychology and violated § 16221(a) of the Public Health Code. Specifically, the DSC found that Maine improperly commented on the potential behavior disorders of his client’s wife without having properly investigated her condition. The DSC believed that Maine was aware that his letter, when being submitted to a court, could have an impact on court proceedings. The DSC stated that its decision was based on its conclusion that the testimony of Dr. Fabick, the DSC’s witness at the administrative hearing, was more credible and compelling than that of Maine’s witness, Dr. Bassos, in part because Dr. Fabick had more experience with family court matters. After the DSC issued its final order, Maine filed this appeal.

### III. The Authority Of The DSC

#### A. Standard Of Review

Maine argues that the DSC lacked the authority to discipline respondent for violating a general duty. He asserts that under the plain language of § 18201(1)(b) and § 16221(a) of the Public Health Code, he was not engaged in the “practice of psychology” when he wrote and signed the letter addressed to the judge because he did not formally diagnose his client’s wife. Rather, Maine asserts he was merely describing his own impressions based on his client’s description of his wife’s behavior in order to encourage the judge to make an independent evaluation of the family situation. Further, Maine asserts that the DSC failed to show that he wrote the letter for purposes of diagnosis and assessment, and no evidence was submitted to show that he employed any method of treatment.

An agency’s ruling must be affirmed if the decision is supported by substantial evidence based on the whole record.<sup>1</sup> “Courts should accord due deference to administrative expertise and

---

<sup>1</sup> *St Clair Intermediate School Dist v Intermediate Ed Ass’n Michigan Ed Ass’n*, 218 Mich App 734, 736; 555 NW2d 267 (1996).

not invade administrative fact finding by displacing an agency's choice between two reasonably differing views."<sup>2</sup>

#### B. The Practice Of Psychology

MCL 333.18201(1)(b) defines the practice of psychology as:

[T]he rendering to individuals, groups, organizations, or the public of services involving the application of principles, methods, and procedures of understanding, predicting, and influencing behavior for the purposes of the diagnosis, assessment related to diagnosis, prevention, amelioration, or treatment of mental or emotional disorders, disabilities or behavioral adjustment problems by means of psychotherapy, counseling, behavior modification, hypnosis, biofeedback techniques, psychological tests, or other verbal or behavioral means.

Here, the DSC reviewed the content of Maine's letter and compared the testimony of both Dr. Fabick and Dr. Bassos. Dr. Fabick testified that given the contents of the letter, including the diagnostic terminology used and the employment of the L.L.P. designation, Maine had engaged in the practice of psychology. The DSC found that this testimony to be the more credible because the witness was experienced in court matters involving family situations as they relate to the practice of psychology. In this case, given the DSC's administrative expertise, we defer to the DSC's choice between the alternative views of the two experts.<sup>3</sup>

#### IV. Substantial Evidence

##### A. Standard Of Review

Maine argues that the DSC erred in rejecting the conclusions of the hearing referee and concluding that respondent violated the American Psychological Association's (APA) Ethical Principles of Psychology and Code of Conduct, §7.02 (Forensic Assessment), §2.01 (Evaluation, Diagnoses and Intervention in Professional Context), and §2.05 (Interpreting Assessment Results). Again, an agency's ruling must be affirmed if the decision is supported by substantial evidence to make findings of fact and conclusions of law based on the whole record.<sup>4</sup> Substantial evidence is evidence that a reasonable mind would consider sufficient to support a conclusion.<sup>5</sup> If substantial evidence exists, a reviewing court must give deference to the administrative agency.<sup>6</sup>

---

<sup>2</sup> *Dignan v Public School Employees Retirement Bd*, 253 Mich App 571, 576; 659 NW2d 629 (2002).

<sup>3</sup> *Dignan*, *supra* at 579.

<sup>4</sup> *St Clair Intermediate School Dist*, *supra* at 736.

<sup>5</sup> *Id.*

<sup>6</sup> *Dignan*, *supra* at 576.

## B. The Evidence Before The DSC

Maine testified that he had written the letter in his capacity as an Employee Assistance Coordinator and that he was not trained to provide forensic reports under § 7.02 of the APA. He further argues that § 2.01 and § 2.05 should not apply to him because he did not perform a psychiatric evaluation, diagnosis, or intervention, and did not complete an assessment of his client's wife. Dr. Bassos agreed, stating that Maine did not provide an evaluation for a patient for the purpose of a legal proceeding. Dr. Bassos also agreed that §2.01 would not apply because the letter was not an expression of an evaluation and that Maine did not violate §2.05 because the letter did not indicate that respondent interpreted any assessment results. In contrast, Dr. Fabick testified that although Maine's letter was not in the format of a forensic report, the letter could still be construed as forensic activity because Maine made diagnostic references of a person exhibiting "bipolar, schizoid, or depressive" behavior. Additionally, Dr. Fabick testified that Maine violated § 2.01 and §2.05 of the APA because he had a general duty as an L.L.P. not to describe a patient he had not seen.

Based on the record as a whole, we conclude substantial evidence was presented to allowed the DSC to make findings of fact and conclusions of law that were contrary to the hearing referee's proposed decision. Accordingly, we defer to the administrative agency's decision that Maine violated the Ethics Code standards.

Affirmed.

/s/ William C. Whitbeck  
/s/ David H. Sawyer  
/s/ Henry William Saad